

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NICOLE PAULTRE BELL, as Administratrix of the Estate  
of SEAN ELIJAH BELL, and on behalf of his infant  
children, JADA BELL and JORDYN BELL and NICOLE  
PAULTRE BELL individually, JOSEPH GUZMAN and  
TRENT BENEFIELD,

Plaintiffs,

- against -

THE CITY OF NEW YORK, THE NEW YORK  
CITY POLICE DEPARTMENT, P.O. PAUL  
HEADLEY, P.O. MICHAEL CARY, P.O. MARC  
COOPER, P.O. GESCARD ISNORA and P.O.  
MICHAEL OLIVER,

Defendants.

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**ANSWER TO CO-  
DEFENDANT MICHAEL  
CAREY'S AMENDED  
CROSS CLAIMS ON  
BEHALF OF DEFENDANTS  
CITY OF NEW YORK, NEW  
YORK CITY POLICE  
DEPARTMENT, AND  
DETECTIVE PAUL  
HEADLEY**

CV 07-2994 (SJ)(RLM)

Jury Trial Demanded

Defendants City of New York, New York City Police Department, and Detective Paul Headley ("City Defendants"), by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, as and for their Answer to "Michael Carey's Amended Answer, Cross-Claims and Counterclaim," dated July 2, 2010, respectfully allege, upon information and belief, as follows:

1. City Defendants repeat and re-allege each and every paragraph of their Answer to Complaint, dated June 18, 2010, as if fully set forth herein, including all affirmative defenses set forth therein.

2. Deny the allegations set forth in the paragraph denominated "1," under the heading "Cross Claims: First Cross-Claim" in "Michael Carey's Amended Answer, Cross-Claims, and Counterclaim" filed by co-defendant Michael Carey.

3. Deny the allegations set forth in the paragraph denominated “2,” under the heading “Cross Claims: First Cross-Claim” in “Michael Carey’s Amended Answer, Cross-Claims, and Counterclaim” filed by co-defendant Michael Carey.

4. Deny the allegations set forth in the paragraph denominated “3,” under the heading “Cross Claims: Second Cross-Claim” in “Michael Carey’s Amended Answer, Cross-Claims, and Counterclaim” filed by co-defendant Michael Carey, except respectfully refer the Court to General Municipal Law Section 50-k for a recitation of the duties of the City of New York with regard to indemnification.

5. Deny the allegations set forth in the paragraph denominated “4,” under the heading “Cross Claims: Third Cross-Claim” in “Michael Carey’s Answer, Cross-Claims, and Counterclaim” filed by co-defendant Michael Carey, except state that the allegation that “any alleged act or omission from which such judgment or settlement arose would have occurred while [Carey] was properly and lawfully acting within the scope of his public employment and in the discharge of his duties and he was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained” is a conclusion of law, rather than an averment of fact, to which no response is required, and respectfully refer the Court to General Municipal Law Section 50-k for a recitation of the duties of the City of New York with regard to indemnification.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE  
CROSS CLAIMS OF CO-DEFENDANT CAREY:**

6. The cross claims fail to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE  
CROSS CLAIMS OF CO-DEFENDANT CAREY:**

7. Defendant City has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political

subdivision thereof, nor has defendant violated any act of Congress providing for the protection of civil rights.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THE  
CROSS CLAIMS OF CO-DEFENDANT CAREY:**

8. At all times relevant to the incident, defendant City of New York acted reasonably in the proper and lawful exercise of its discretion.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO THE  
CROSS CLAIMS OF CO-DEFENDANT CAREY:**

9. To the extent Defendant Carey asserts state law claims against the City of New York, such claims should be barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO THE  
CROSS CLAIMS OF CO-DEFENDANT CAREY:**

10. Defendant Carey's cross-claims against defendant City are not ripe for adjudication.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO THE  
CROSS CLAIMS OF CO-DEFENDANT CAREY:**

11. Any injury alleged to have been sustained by plaintiffs was not the proximate result of conduct on the part of defendant City of New York, the New York City Police Department, or Detective Paul Headley and resulted in whole or in part from the culpable, negligent and/or intervening conduct of defendant Carey.


**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO THE  
CROSS CLAIMS OF CO-DEFENDANT CAREY:**

12. Defendant Carey's cross claims may be barred in part by the doctrines of res judicata and/or collateral estoppel.

**WHEREFORE**, the City Defendants request judgment dismissing the amended cross-claims of co-defendant Michael Carey, as against them with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
July 21, 2010

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By:   
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Docket No.: CV 07-2994 (SJ)(RLM)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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Defendants.

**ANSWER TO CO-DEFENDANT MICHAEL CAREY'S  
AMENDED ANSWER WITH CROSS-CLAIMS AND  
COUNTERCLAIM**

***MICHAEL A. CARDOZO***

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*Of Counsel: Kathleen E. Naughton  
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*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 2010*

*..... Esq.*

*Attorney for .....*